

January 14, 2005

United States Government

NATIONAL LABOR RELATIONS BOARD

Region 9

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550 Main Street

Cincinnati, Ohio 45202-3271

Telephone: (513) 684-3686

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Mr. Richard Hays
314 Northgate Court
Westerville, Ohio
43081

Re: JBM, INC.

D/B/A BLUEGRASS SATELLITE
Case 9-RD-2075

Dear Mr. Hays:

The Region has carefully investigated and considered your petition filed under Section 9(c) of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your petition. The petition was filed before the elapse of a reasonable period of time for good faith bargaining between the Employer and Union following their entering into a settlement agreement in which the Employer recognized the Union as the collective-bargaining representative of the unit of employees involved in this matter. More specifically, I am dismissing your petition for the following reasons:

Petition and Bargaining History: Your petition, filed on January 6, 2005, seeks to decertify the United Electrical, Radio & Machine Workers of America (UE), as the bargaining representative of the following unit of employees:

All satellite technicians, including the Head Area Technicians and clerks employed by the Employer at its Columbus, Ohio facility, excluding all managers and supervisors excluded by the Act.

I note this petition is essentially identical to a petition filed by you on June 23, 2004, in Case 9-RD-2061^{1/} and dismissed by me on November 19, 2004 based on essentially the same rationale on which I rely to dismiss the subject petition.

The Employer recognized the Union as the collective-bargaining representative of the Unit as part of a settlement agreement it entered into on March 17, 2004 in Cases 9-CA-40251, et al. which was approved by the Administrative Law Judge assigned to hear those cases. Subsequent to that settlement, the parties met for a number of bargaining sessions between May 14 and at least December 8, 2004. On July 28, 2004 and August 31, 2004, I issued separate Complaints and Notices of Hearing against the Employer in Cases 9-CA-41052 and 9-CA-41219. The complaint in Case 9-CA-41052 alleges, inter alia, certain unilateral changes made by the Employer without bargaining with the Union and in violation of Section 8(a)(5) of the Act.^{2/}

^{1/} I note that you submitted a new showing of interest in support of your petition. The fact that certain employees may remain dissatisfied with the Union as their bargaining representative does not change my conclusion that your petition may not be processed at this time. I further note that I have concluded there is sufficient evidence to allege unlawful Employer involvement in procuring a substantial portion of this showing of interest in the Second Consolidated Complaint that issued in Cases 9-CA-41052, et al.

^{2/} This complaint and the complaint in Case 9-CA-41219 also allege that the Employer engaged in conduct in violation of Section 8(a)(3) and Section 8(a)(3) and (4), respectively, regarding the employment conditions of

On November 18, 2004, a Consolidated Complaint issued combining the two previously mentioned cases with Case 9-CA-41370 for hearing. The allegations added with respect to Case 9-CA-41370 included, inter alia, additional allegations of unilateral changes related to unit employees' compensation and allegations that the Employer had failed to provide requested items presumptively relevant to the bargaining process including the names, addresses, telephone and fax numbers of all current Unit employees as well as information related to employees' current benefits.

On January 13, 2005, I issued a Second Consolidated Complaint incorporating allegations made in Cases 9-CA-41491, 9-CA-41559 and 9-CA-41593 with those previously set forth in the Consolidated Complaint which issued on November 18, 2004. The allegations in the outstanding Second Consolidated Complaint include, inter alia, unilateral changes made by the Employer which involve issues related to unit employees' compensation, benefits and working conditions; allegations that the Union has requested a number of items relevant to the bargaining process which the Employer has failed to provide, or has only recently provided;^{3/} a threat made by the Employer to an employee/union negotiator during bargaining; the solicitation of employees by a supervisor of the Employer to sign a prepared document to decertify the Union; and bad faith bargaining on the part of the Employer by engaging in dilatory tactics including canceling previously scheduled bargaining sessions, frequently arriving late for collective-bargaining sessions and refusing to meet on a regular and consistent basis with the Union. The alleged unlawful conduct began as early as March 2004 and has continued, at least, through the last bargaining session held in December 2004.

Legal Analysis and Determination: The Board has held that following a settlement agreement containing a provision requiring bargaining, a reasonable period of time must be afforded the parties in which to reach a contract during which time no question concerning representation may be raised. See, *Poole Foundry & Machine Co.*, 95 NLRB 34, 36 (1951), enf'd. 192 F.2d 741 (4th Cir. 1951), cert. denied 342 U.S. 954 (1952). See also, *King Soopers, Inc.*, 295 NLRB 35, 37 (1989); *VIP Limousine*, 276 NLRB 871, 877 (1985); *AT Systems West, Inc.*, 341 NLRB No. 12, slip op. at pp. 5-6 (2004). This is the case even if the union clearly no longer represents a majority of the employees. *Poole Foundry & Machine Co.*, supra; *AT Systems West, Inc.*, supra. The Board and the courts have recognized that the bargaining requirement imposed by a settlement agreement may impact upon employees' rights to choose their representative for purposes of collective bargaining; however, as noted by the Fourth Circuit Court of Appeals in its decision enforcing the Board's Order in *Poole Foundry & Machine Co.*, 192 F.2d at 743, "[t]hese employees are free to file a decertification petition after the settlement agreement has been in effect a reasonable length of time."

In determining whether a reasonable period of time for bargaining has elapsed, the Board considers what has transpired during the period of time involved, including whether the parties are bargaining for a first contract (which adds to the complexity of the bargaining) whether the employer has engaged in meaningful good-faith negotiations over a substantial period of time, and whether an impasse in negotiations has been reached. *King Soopers, Inc.*, 295 NLRB at 37;

several individuals. I do not find, however, that this alleged conduct necessarily impacted the progress of the parties' bargaining.

^{3/} Among the items recently provided by the Employer is a list of the current Unit employees with their addresses and telephone and fax numbers. This information, although requested on April 23, 2004, was only given to the Union on or about December 21, 2004.

Lee Lumber & Building Material Corp., 334 NLRB 399 (2001); *VIP Limousine*, supra. An additional important consideration is whether the bargaining which has taken place occurred in the context of unfair labor practices of the sort which would tend to undermine a union's position. See e.g., *AT Systems West, Inc.*, 341 NLRB No. 12, at slip op. 6.

In the instant case, the parties are bargaining over an initial collective-bargaining agreement. They continue to meet and there has been no contention of which I have been made aware that they are at impasse. Moreover, the bargaining which has taken place has occurred in the context of numerous alleged unfair labor practices. These allegations included unilateral changes in employees' working conditions, as well as the Employer's failure to provide information relevant to the bargaining. This conduct logically makes bargaining all the more difficult and thus serves to lengthen the reasonable period of time required for bargaining insulated from the raising of a question concerning representation. See, e.g., *AT Systems West, Inc.*, 341 NLRB No. 12, at p. 6 (unilateral change in working conditions); *Lexus of Concord, Inc.*, 2002 WL 229414, 32-CA-18925-1 and 32-CA-19003-1 (JD (SF)-10-02, Judge Mary Miller Cracraft, February 11, 2002) (untimely providing of relevant information).

In view of the foregoing, I conclude that the petition in the instant case was prematurely filed during a period of time following the settlement agreement when no question concerning representation could be raised, and that a reasonable period of time for bargaining has not yet transpired -- particularly in light of the Employer's current alleged unfair labor practices which would naturally complicate and impede the bargaining process. I, therefore, dismiss the petition. ^{4/}

Your Right to Obtain a Review of Dismissal Action: Pursuant to the National Labor Relations Board's Rules and Regulations, any party may obtain a review of this action by filing a request for review with the National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570. If you file a request for review, you must also send a copy to the other parties to this proceeding and to me.

Request for Review Due Date: The request for review must be received by the Executive Secretary for the Board by the close of business at 5:00 p.m. EST on **January 28, 2005**. However, if you mail the request for review, it will be considered timely if it is postmarked no later than the day before the due date.

Extension of Time to File Request for Review: Upon good cause, the Board may grant special permission for a longer period within which to file a request for review. If you file a request for extension of time with the Executive Secretary in Washington, you must send a copy of your request to the other parties to this proceeding and to me.

Request for Review Contents: The request for review must contain a complete statement setting forth the facts and the reasons that support your request for review of the decision to dismiss the petition. The request for review and any request for extension of time must include a

^{4/} Upon final disposition of the unfair labor practice proceedings this matter, you may, if you wish, request that the petition be reinstated. In the event such request is made, the matter will be reconsidered at that time and the petition reinstated, if appropriate. *Douglas-Randall, Inc.*, 320 NLRB 431 (1995). You, as the Petitioner in the matter, are being made a party in interest to the unfair labor practice proceedings, limited solely to receipt of a copy of the Order or other document which finally disposes of the proceedings.

statement that a copy has been served on the other parties to this proceeding and on me and that service has been accomplished in the same or faster manner as that used to serve the Board.

Sincerely,

/s/ Gary W. Muffley

Gary W. Muffley
Regional Director

GWM/DAB/dml

cc: Executive Secretary
National Labor Relations Board
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Washington, D.C. 20570-0001

JBM, Inc. d/b/a Bluegrass Satellite
33 West Second Street
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Mr. Richard C. Schneider
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Mr. Anthony Monaco
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United Electrical, Radio and Machine
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